

Internal Revenue Service
memorandum

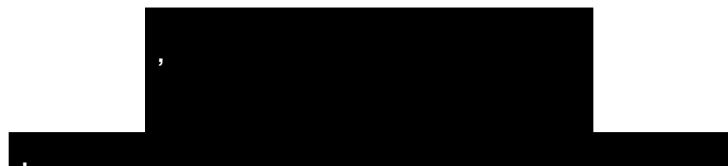
date: MAY 1 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-314-91
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated February 26, 1991, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

008942

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

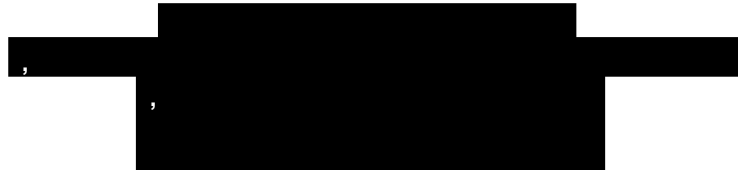
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

FEB 26 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, reading "Steven A. Bartholow".

Steven A. Bartholow
Deputy General Counsel

Enclosure

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

MEMORANDUM

FEB 11 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in reference to your Form G-215 dated [REDACTED], wherein you requested my opinion concerning the employer status of [REDACTED]. [REDACTED] has not previously been held to be an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA).

According to information furnished in a letter dated [REDACTED], by [REDACTED] Senior Vice President of [REDACTED], was incorporated on [REDACTED], in the State of South Dakota. [REDACTED] stated that [REDACTED] has "roughly" [REDACTED] power units which are owned by owner/operators and [REDACTED] trailers which are owned by [REDACTED]. [REDACTED] stated that [REDACTED] is a motor carrier which hauls general commodities throughout the continental United States. [REDACTED] stated that [REDACTED] provides truckload service between all states for the service of its numerous customers, particularly the transportation of [REDACTED]. [REDACTED] further stated that the major portion of [REDACTED]'s operations "moves between the midwest corridor"; that [REDACTED]% of [REDACTED]'s rates are based on a per mile and/or flat truckload charge; and that [REDACTED]% of [REDACTED]'s stock is owned by [REDACTED].

In Interstate Commerce Commission (ICC) Docket No. [REDACTED], dated [REDACTED], [REDACTED] was granted a Certificate of Public Convenience and Necessity to engage in transportation as a common carrier by motor vehicle. In ICC Docket No. [REDACTED], dated [REDACTED], [REDACTED] was granted a permit to engage in transportation as a contract carrier by motor vehicle.

On [REDACTED], [REDACTED] was granted an Intrastate Certificate of Public Convenience and Necessity by the Public Service Commission of the State of Montana. That Certificate authorizes [REDACTED] to transport railroad supplies and equipment as a Class C contract carrier in intrastate service by motor vehicles for hire over and on the public highways of the State of Montana between [REDACTED] and [REDACTED]. This Certificate expressly restricts transportation "to the account of [REDACTED]."

[REDACTED]'s contract with [REDACTED] is dated [REDACTED]. Under that contract, [REDACTED] has agreed to provide motor carrier service to [REDACTED] for the transportation of "general commodities." Paragraph 3 of the contract provides that its term shall commence on [REDACTED] and shall continue in effect until [REDACTED] ceases to hold ICC contract carrier authority or until the contract is terminated by either party by not less than 60 days' prior written notice. Paragraph 4 of the contract gives [REDACTED] the right to terminate the contract upon 15 days' prior written notice if [REDACTED] fails to provide [REDACTED] with adequate service "as determined by"

"[REDACTED] exercises no control or supervision over the employees of the CARRIER [REDACTED], and, in fact, disavows any right to do so, and [REDACTED] in no way shall direct the operations of the CARRIER or the manner of its performance."

In a letter dated [REDACTED], addressed to Mr. Wayne J. Scharnak of your staff, [REDACTED], Associate General Counsel of [REDACTED], provided additional information about [REDACTED]. [REDACTED] stated that [REDACTED] first contracted with [REDACTED] for the purchase of motor carrier transportation in [REDACTED], following [REDACTED]'s solicitation of competitive bids from several carriers.

1/ [REDACTED] is an employer under the RRA and the RUIA, with service creditable from [REDACTED] to date.

Director of Research and Employment Accounts

supervisory authority over [redacted] drivers. In addition, [redacted] offers no training for [redacted] drivers and is not aware of any special training provided by [redacted] for its drivers in relation to [redacted]. [redacted] stated that [redacted] provides [redacted] with "scheduled, dependable transportation of locomotive repair components" and that [redacted]'s services are not integrated into [redacted]'s business or operations.

[redacted] also stated that [redacted] is responsible for providing qualified drivers to furnish the services [redacted] renders to [redacted]. [redacted] management hires and assigns drivers and controls their hours of work. [redacted] stated that [redacted] bills [redacted] weekly on a cost per-mile traveled basis and that [redacted] has no knowledge of [redacted]'s method of payment to its employees. No [redacted] employee business or traveling expenses are reimbursed by [redacted], and [redacted] has no knowledge of any of [redacted]'s methods of payment of reimbursement to its employees. [redacted] stated that any tools or materials used by [redacted] in providing services are supplied by [redacted].

Section 1(a)(1) of the RRA (45 U.S.C. §231(a)(1)) defines an employer under the Act in pertinent part as follows:

"The term 'employer' shall include --

"(i) any express company, sleeping car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *."

Sections 1(a) and 1(b) of the RUIA (45 U.S.C. §351(a) and (b)) contain substantially similar definitions.

Both section 1(b) of the RRA (45 U.S.C. § 231(b)) and section 1(d) of the RUIA (45 U.S.C. § 351(d)) define a covered employee as an individual in the service of an employer for compensation. Section 1(d) of the RRA further defines an individual to be "in the service of an employer" when:

"(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of

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rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

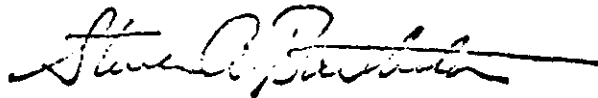
"(ii) he renders such service for compensation
* * *."

Section 1(e) of the RUIA (45 U.S.C. § 351(e)) contains a definition of employee service substantially identical to that quoted above.

No railroad owns any interest in [REDACTED]; rather, [REDACTED] owns all of [REDACTED]'s stock. [REDACTED] is not a carrier by rail; rather, it is a common carrier by motor vehicle. There is no indication that [REDACTED] is under common control with a covered rail carrier employer. [REDACTED] is not, therefore, itself a covered employer under the RRA and the RUIA.

Further, the evidence establishes that [REDACTED] is engaged in the business of transporting freight as a common carrier by motor vehicle and that it has been in that business since [REDACTED] long before it began to furnish contract services to the [REDACTED]. [REDACTED] has taken the necessary steps to license itself as both a common carrier by motor vehicle and as a contract carrier by motor vehicle. [REDACTED] retains the right to direct and control its drivers while they are performing service for [REDACTED], and the contract between [REDACTED] and [REDACTED] expressly reserves the right of such control to [REDACTED]. It is therefore my opinion that the drivers providing the freight transportation service to [REDACTED] under [REDACTED]'s contract with [REDACTED] are not employees of [REDACTED] within the meaning the RRA and the RUIA.

An appropriate Form G-215 giving effect to the foregoing is attached.



Steven A. Bartholow

Attachment

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mpd 